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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 000675

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SUBJECT: TURKEY: CONSTITUTIONAL COURT DISPUTE SET TO BOIL
OVER

REF: ANKARA 368

Classified By: POL Counselor Daniel O'Grady, for reasons 1.4 (b,d)

11. (C) Summary: Already simmering personal and professional differences on Turkey's Constitutional Court are set to boil over as a dispute over the impartiality of its Vice President attracts increasing levels of political and press attention. At stake are the scope of the Ergenekon trial, the bounds of the rule of law, and the balance between Ataturkist ideologues and reform-minded liberals in Turkey's state structure. End summary.

BASICS OF THE COURT

12. (SBU) Turkey's Constitutional Court is an eleven-person body charged with assessing the constitutionality of the laws and actions of the legislative, executive, and judicial branches of government. Its members are appointed by the President and serve until they reach the mandatory retirement age for civil service officials, 65. The President chooses candidates from a particular pool of potential candidates specific to each seat. For example, two of the seats can only be filled by military court judges; other seats are reserved for civilian court judges, prosecutors, and other senior civil service officials. The President and Vice President of the Court are elected by the Court members themselves. In addition to the 11 full members, there are four alternate members who sit in when conflict of interest or physical absence prevent one of the full members from hearing a case.

13. (SBU) Of the 11 full members of the current Court, eight were named by President Ahmet Necdet Sezer, himself a former Constitutional Court President. Of the remaining three, one was named by Suleyman Demirel, and two by Turgut Ozal. Hasim Kilic, one of the two Ozal appointees, is the President of the Court. His Vice President, Osman Paksut, was appointed by Sezer.

14. (C) The Court is seen as, and largely considers itself to be, one of the last guardians of the starkly secular, centralized, unitarian Ataturkist ideology. President Sezer, an ardent Ataturkist himself, amplified this bias on the court by adhering closely to the Ataturkist standard in naming his appointees. This is largely accepted by society,

mostly because the selection process for officials that attain high enough positions to be considered as possible candidates for the court emphasized adherence to the Atatürkist ideal. President Kilic and the other Ozal appointee, Sacit Adali, appear to be exceptions, having voted against the majority on the three recent touchstone cases: they voted against the 367-member quorum requirement in Parliament for the election of a new President, they voted against the annulment of laws allowing headscarves in universities, and they voted against the closure of the governing Justice and Development Party (AKP).

IMPARTIALITY SCANDAL

¶5. (SBU) Recent evidence in the Ergenekon case has called into question the impartiality of the court's Vice President Osman Paksut. Recordings of wiretaps made during the AKP case revealed that Paksut's wife, Ferda, held conversations with members of the military suspected of involvement in the alleged Ergenekon coup plot. In the recordings, Mrs. Paksut gleefully discusses details of the case, expresses her desire to see AKP closed, and occasionally indicates that her husband is in the room listening to her end of the conversation. Citing the recordings as grounds to suspect the case may have been compromised by Judge Paksut via his wife, a number of press organs began to call for Paksut's resignation.

¶6. (C) Paksut has resisted these calls, claiming that he did nothing to compromise the case. He launched a counterattack

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on two fronts: first, alleging that the wiretaps that gathered the evidence were unauthorized, and secondly, claiming that Constitutional Court President Kilic was negligent in his duties by not informing all members of the court when he was himself told by the Ergenekon prosecutors that the phone of one of the Court's members was being tapped. With both pressure and legal proceedings mounting, the situation on the Court is looking more and more unsustainable.

COMMENT: WHAT'S AT STAKE

¶7. (C) The Paksut case touches on a number of divisive issues percolating through the Turkish political scene. It fuels the arguments of both sides in the Ergenekon debate, on the one hand, unveiling the murky relationships among senior officials that hold Turkey's "deep state" together, but on the other hand sharpening suspicion that the case has morphed into a AKP-led vendetta against its perceived enemies. The scandal emerged in the midst of debate over whether the Constitutional Court should be reformed as part of a set of AKP-proposed constitutional amendments. The AKP had discussed the possibility of splitting the Court into two chambers, one for hearing cases and the other for reviewing laws. Members of the opposition argue that such a reform would merely allow AKP to stuff the court with its own supporters, thereby politicizing it. The Paksut debate further polarizes that discussion, underscoring the need for reform in the mind of AKP members and serving as clear evidence in the minds of the opposition of AKP's will to destroy the Court. How Paksut is investigated and the outcome of that investigation will test the strength of rule of law in Turkey, much like the Ergenekon case writ large.

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Silliman